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10/705,336	11/10/2003	Toshiaki Irie	04995/128001	5133

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OSHA LIANG L.L.P.
TWO HOUSTON CENTER
909 FANNIN, SUITE 3500
HOUSTON, TX 77010

EXAMINER

FINDLEY, CHRISTOPHER G

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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docketing@oshaliang.com
buta@oshaliang.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIAKI IRIE

Application No. 10/705,336
Technology Center 2600

Mailed: January 21, 2010

Before ERIC HAWTHORNE, *Supervisory Paralegal Specialist*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated December 15, 2008. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 5-7 of the Appeal Brief filed December 15, 2008 is deficient because it does not map independent claims 1 and 2 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper

providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed December 15, 2008 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EH/mls

OSHA LIANG L.L.P.
TWO HOUSTON CENTER
909 FANNIN, SUITE 3500
HOUSTON, TX 77010